

JOHN K. GALLAGHER, ESQ.
Nevada Bar No. 0956
GUILD, RUSSELL, GALLAGHER
& FULLER, LTD.
100 West Liberty Street, Suite 800
P.O. Box 2838
Reno, NV 89505
(775) 786-2366

MORGAN CHU, ESQ.
SAMUEL K. LU, ESQ.
JULIA HODGE, ESQ.
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
(310) 277-1010

Attorneys for NCR CORPORATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BETTY BROWN, an individual,
Plaintiff,

vs.

NCR, CORPORATION, a Maryland
corporation and KMART CORPORATION,
a Michigan corporation,
Defendants.

NCR CORPORATION, a Maryland
corporation,
Counterclaimant,

vs.

BETTY BROWN, an individual,
Counterdefendant.

Case No. CV-N-01-0706-ECR-RAM

ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT AND
COUNTERCLAIM OF DEFENDANT
NCR CORPORATION

NCR Corporation ("NCR") answers the First Amended Complaint of Plaintiff as follows:

1. NCR is informed and on that basis admits that Plaintiff is a resident of the State of

FILED

02 APR 18 PM 12:48

LANCE S. WILSON
CLERK
BY DEPUTY

14/15

1 Nevada, County of Washoe, City of Reno.

2 2. Admitted.

3 3. NCR lacks information sufficient to form a belief as to the truth or falsity of the
4 statements made in this paragraph of the First Amended Complaint, and denies them on that
5 basis.

6 4. Admitted.

7 5. NCR admits that Plaintiff purports to bring an action for patent infringement
8 against NCR pursuant to 35 U.S.C. §§ 101 et seq. but denies that any infringement by NCR has
9 occurred, is occurring, or will occur.

10 6. NCR admits that U.S. Patent No. 5,924,079 (the "'079 patent'") appears on its face
11 to have issued on July 13, 1999 and appears on its face to have issued to Plaintiff. NCR denies
12 that the '079 patent was duly and legally issued. NCR lacks information sufficient to form a
13 belief as to the truth or falsity of the statement that Plaintiff is still the owner of the '079 patent,
14 and denies it on that basis. The remaining allegations of this paragraph are denied.

15 7. NCR denies that it infringes the claims of the '079 patent. NCR denies that it has
16 been and will continue to infringe the '079 patent. NCR lacks information sufficient to form a
17 belief as to the truth or falsity of the balance of the allegations of this paragraph, and denies them
18 on that basis.

19 8. NCR denies that Plaintiff provided proper notice to NCR and Kmart of her
20 alleged patent infringement claims. NCR lacks information sufficient to form a belief as to the
21 truth or falsity of the balance of the allegations of this paragraph, and denies them on that basis.

22 9. Denied.

23 AFFIRMATIVE DEFENSES

24 NCR alleges the following affirmative defenses:

25 FIRST AFFIRMATIVE DEFENSE
26 (Invalidity of the '079 Patent)

27 10. The '079 patent is invalid under the provisions of Title 35, United States Code,

28

1 including, inter alia, 35 U.S.C. §§ 101, 102, 103, and 112.

2 SECOND AFFIRMATIVE DEFENSE
(Non-Infringement of the '079 Patent)

3 11. NCR has not, does not, and will not directly infringe, contributorily infringe,
4 actively induce infringement by others, or in any other manner infringe the '079 patent.

5 COUNTERCLAIM
6 (Declaration of Non-Infringement and Invalidity of the '079 patent)

7 NCR alleges the following Counterclaim against Plaintiff:

8 12. This court has subject matter jurisdiction over this Counterclaim pursuant to 28
9 U.S.C. §§ 1331 and 1338(a) in combination with 28 U.S.C. §§ 2201 and 2202.

10 13. This court has personal jurisdiction over Plaintiff with respect to this
11 Counterclaim by virtue, inter alia, of Plaintiff having submitted to the jurisdiction of this court by
12 filing the First Amended Complaint.

13 14. NCR repeats the allegations contained in paragraphs 1 through 13 of its Answer
14 and Counterclaim as though fully set forth herein.

15 15. An actual and justiciable controversy exists between NCR and Plaintiff with
16 respect to the non-infringement, invalidity, and scope of the '079 patent. Absent a declaration of
17 non-infringement and invalidity, Plaintiff will continue to wrongfully assert the '079 patent
18 against NCR and will thereby cause NCR irreparable injury and damage.

19 16. NCR has not, does not, and will not infringe the '079 patent, either directly or in
20 any other manner, and NCR is entitled to a declaration to that effect.

21 17. The '079 patent was not duly and legally issued and is invalid under 35 U.S.C. §§
22 101, 102, 103, and 112, and NCR is entitled to a declaration to that effect.

23 PRAYER

24 WHEREFORE, NCR prays for judgment as follows:

25 A. For dismissal of Plaintiff's First Amended Complaint with prejudice, and that
26 Plaintiff take nothing against NCR by the First Amended Complaint;
27

28

1 B. For a judicial determination and declaration that the '079 patent, and each and
2 every claim thereof, is invalid and not infringed by NCR;

3 C. For an order of this Court enjoining Plaintiff from suing, or threatening to sue,
4 Kmart or any existing or potential customer or supplier of NCR for infringement of the '079
5 patent;

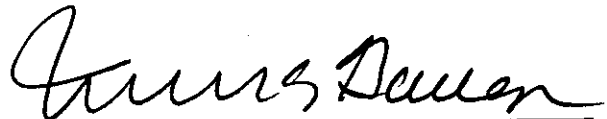
6 D. For a judicial determination, pursuant to 35 U.S.C. § 285, that this case is
7 exceptional and that NCR be awarded its attorneys' fees and costs;

8 E. For NCR's costs of suit incurred herein; and

9 F. For such other and further relief as the Court deems just and proper.

10 DATED this 18th day of April, 2002.

11 GUILD, RUSSELL, GALLAGHER
12 & FULLER, LTD.

13 

14 JOHN K. GALLAGHER, ESQ.
15 100 W. Liberty Street, Suite 800
16 P.O. Box 2838
17 Reno, NV 89505
18 Telephone: (775) 786-2366
19 Facsimile: (775) 322-9105

20 MORGAN CHU, ESQ.
21 SAMUEL K. LU, ESQ.
22 JULIA HODGE, ESQ.
23 IRELL & MANELLA LLP
24 1800 Avenue of the Stars, Suite 900
25 Los Angeles, CA 90067
26 Telephone: (310) 277-1010
27 Facsimile: (310) 203-7199

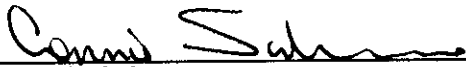
28 Attorneys for NCR CORPORATION

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of Guild, Russell, Gallagher & Fuller, Ltd., and that on this date I deposited for mailing in the U.S. Mail at Reno, Nevada, postage prepaid, a true and correct copy of the foregoing **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND COUNTERCLAIM OF DEFENDANT NCR CORPORATION** addressed as follows:

Brian C. Kelly, Esq.
Hawkins, Folsom, Muir, Kelly & Vallas
One East Liberty Street, Suite 416
Reno, NV 89501

DATED this 18TH day of April, 2002.



Connie Salerno